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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY JOSEPH BRUNO,

Defendant and Appellant.

F071441

(Super. Ct. No. MCR045090C)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Madera County. Dale J. Blea, Judge.

Sara E. Coppin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Nora S. Weyl, Deputy Attorneys General, for Plaintiff and Respondent.

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*Before Detjen, Acting P.J., Peña, J., and Smith, J.

Defendant Anthony Joseph Bruno challenges his convictions for burglary and conspiracy to commit burglary on the basis of insufficiency of the evidence. We reject his contentions and affirm the judgment.

FACTS AND PROCEDURAL HISTORY

Bruno was charged in an information filed in the Madera County Superior Court with first-degree residential burglary and conspiracy to commit burglary in counts 1 and 2, respectively. (Pen. Code,¹ §§ 459; 182, subd. (a)(1).) Both counts included allegations of a strike prior, a serious felony prior, and a prison prior. (§§ 667, subds. (b)-(i); 667, subd. (a)(1); 667.5, subd. (b).)

Following a jury trial, Bruno was found guilty of both burglary and conspiracy to commit burglary. In a bifurcated trial, the court found the sentence enhancement allegations of the strike prior and the serious felony prior to be true.²

Bruno was sentenced to an aggregate term of 17 years' imprisonment on count 1, with application of the prior strike and serious felony enhancements (the upper term of six years, doubled on the basis of the prior strike, plus an additional five years for the prior serious felony). (See §§ 461, subd. (a); 667, subds. (b)-(i); 667, subd. (a)(1).) The sentence on count 2 was stayed under section 654.

In December 2012, Breanna Darrow, aged 19, lived with her grandparents, Raul and Ann Lozano, in a house on a large property in the foothills above Madera, near Hensley Lake. The house, set into a hillside, was on a dirt road off Road 603 in Madera County. The property had a low barbed-wire fence around it. In the front of the house only, the fence had horizontal wooden planks and was about three feet high; the placement of the planks made it easy to hop over that particular fence. There were two

¹Subsequent statutory references are to the Penal Code unless otherwise noted.

²The record does not reflect a finding by the court as to the prison prior alleged pursuant to section 667.5, subdivision (b).

access points onto the property from the dirt road. One was through an electronically controlled gate that opened onto a driveway on the side of the house. The other was through a low “pedestrian gate” that was located opposite the main front door of the house.

Darrow’s residence was in a rural area, where the houses were widely spaced and typically had big lots. As Darrow described it, the houses in the area were “acres apart.” Given the relative isolation of the location, it was rare for strangers to come by the property for any reason. In the many years that Darrow had lived in that house, she could not recall any person, other than invited guests, having come up to her front door.

On December 17, 2012, Darrow, as well as her grandparents, left the house early in the morning to go to work. Darrow did not feel well that day and returned home earlier than usual in the afternoon. As she drove up to the front of the house on the dirt road, she was surprised to see a red, older model, two-door Acura sedan parked outside her house. She also observed that the pedestrian gate was wide open. Darrow pulled past the Acura and parked her car in the driveway, going through the electronically controlled gate. She then walked out to where the Acura was parked. She noted the Acura’s engine was running and the windows were open; a smaller back window on the driver’s side was covered with writing. She recognized a woman sitting in the back seat, on the driver’s side, as Ester Lopez. Darrow had gone to school with Lopez but had not seen her in five or six years.

Darrow went up to the passenger side of the Acura and saw that Lopez was texting on her cell phone. She greeted Lopez and asked if Lopez needed help; Lopez did not reply. Darrow then heard the sound of people approaching and turned to see three men coming down the side of her house, evidently from the backyard area. One of the men came out of the pedestrian gate and brushed past Darrow to get to the Acura; he was later identified as Steven Ambrosio and was a codefendant in the instant matter. The other

two men simply hopped the planked front fence to get directly to the Acura; one of these men was later identified as Bruno and the other as Andrew Trevino.

Ambrosio hit the trunk of the Acura as he passed it. Darrow saw the trunk lid bounce up and down, revealing a broken latch. Darrow asked what they were doing on her property. Bruno, who was standing by the driver's door, said they were looking for "Josh." Darrow responded that Josh lived a few houses down the road and pointed out his house. Bruno said, "thanks," and got into the car and drove off with his companions. Darrow watched the Acura as it drove right by Josh's house without stopping. She was able to note the car's license plate number.

Darrow then walked around to the back of her house, where the men had appeared to come from. She observed that the back door, which led into the laundry room, was open. She also saw that the laundry room window was open; the window screen had been removed and placed on the ground outside.³ As soon as Darrow saw the back door was open, she called 911 and was connected to the Madera County Sheriff's dispatcher. Darrow explained what had transpired and provided a detailed description of the red Acura and the four people she had seen. She also conveyed the Acura's license plate number.

While she was on the phone with the dispatcher, Darrow entered the house and went through the laundry room into the living room. She found the house in a state of disarray, an entirely different picture than the ordered home with all items in place that she had left that morning when she went to work. The television had been removed from the entertainment center and put on the floor. The satellite and cable box were unplugged. Items were scattered everywhere. The laptop computer that had been on the kitchen counter, wrapped gifts under the Christmas tree, and the family's cell phone

³Darrow's grandmother, Ann Lozano, testified that the laundry room window was generally left "slightly" open to clear the odor from a cat litter box that was kept in the room.

chargers were all missing. The lights of the upstairs bedrooms were on. In Darrow's room, her drawers were pulled open and her DVD player was gone. In her grandmother's room, everything was on the floor and her grandmother's jewelry box was missing. The spare bedroom had also been ransacked.

Darrow called her grandfather, who arrived at the house about 20 minutes later. Meanwhile, Darrow had found a cheetah-print pillowcase by the fireplace in the living room that was stuffed with the laptop computer and jewelry items. There were two cheetah-print pillowcases in the laundry room; they were also filled with items from the house, including her grandmother's jewelry box and the missing Christmas presents. The cheetah-print pillowcases did not belong to the family.

At 3:40 p.m., dispatch informed Sergeant Zachary Zamudio that a burglary had been interrupted at a residence on Road 603 and that the suspects had only recently left the scene. As Zamudio headed to Darrow's residence, he saw a red Acura that matched the description of the suspect vehicle. The Acura had a broken trunk and paint on the driver's side window. He detained the four occupants of the Acura and summoned Darrow to the site to make potential identifications. Darrow arrived and identified all four suspects, including Bruno, as the persons who had been at her house about 20 minutes earlier. She also identified the Acura as the one that was parked outside her house when she came home from work. The car's license plate number matched the number she had provided to the sheriff's office (although she had mistaken a "Q" for an "O").

Thereafter, Sergeant Zamudio went to Darrow's residence to continue the investigation. As part of his investigation, he noted that the screen had been removed from the laundry room window (the laundry room was at the back of the house and not visible from the road). Zamudio deduced the suspects gained entry into the house through the laundry room window. He saw two pillowcases near the laundry room that contained jewelry and wrapped Christmas presents. He saw that wires had been detached

from the television as well as drawers pulled open. No footprints or fingerprints were found inside the house.

DISCUSSION

Sufficiency of the evidence as to the burglary and conspiracy convictions

Bruno argues his convictions for burglary and conspiracy to commit burglary cannot stand because the evidence was insufficient to support both these convictions. We reject his contentions.

In reviewing a challenge based on the sufficiency of the evidence to support a conviction, our consideration is limited to the question of whether the conviction is supported by substantial evidence, i.e., evidence that is “reasonable in nature, credible, and of solid value.” (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) More specifically, “[i]n reviewing the sufficiency of the evidence, we must determine ‘whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” (*People v. Davis* (1995) 10 Cal.4th 463, 509.) We must presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) “Substantial evidence includes circumstantial evidence and any reasonable inferences drawn from that evidence.” (*In re Michael D.* (2002) 100 Cal.App.4th 115, 126.)

Burglary conviction

Bruno argues he cannot be convicted of burglary as a direct perpetrator because the evidence was insufficient to prove he actually entered Darrow’s house. He further argues the evidence similarly was insufficient to prove he aided and abetted the burglary. Assuming arguendo that the evidence was insufficient to prove that Bruno entered Darrow’s house, it nonetheless was sufficient to prove he aided and abetted the burglary. Accordingly, we affirm his burglary conviction. (*People v. Kwok* (1998) 63 Cal.App.4th 1236, 1245 [“Before a judgment of conviction can be set aside for insufficiency of the

evidence to support the trier of fact's verdict, it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support it."").)

The jury was instructed that a perpetrator commits the crime of burglary when he enters a building with the intent to commit theft. The jury was further instructed that, "[s]omeone *aids and abets* a crime if he or she knows of the perpetrator's unlawful purpose and he or she specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the perpetrator's commission of that crime." As to the intent of an aider and abettor, the jury was instructed, "[t]o be guilty of burglary as an aider and abettor, the defendant must have known of the perpetrator's unlawful purpose and must have formed the intent to aid, facilitate, promote, instigate, or encourage commission of the burglary before the perpetrator finally left the structure."

Here, there was substantial evidence that at least some members of the group entered Darrow's house to steal valuables from within. Upon her unexpected arrival home, Darrow saw Lopez sitting in a red Acura, parked, with its engine running, outside the house; Lopez was texting on her cell phone. Within moments, three men—Bruno, Ambrosio, and Trevino—emerged from the direction of the backyard and came down the side of the house to the waiting car. The group of three men and Lopez quickly drove off without providing to Darrow an adequate explanation regarding their presence. Darrow retraced the path the men took to get to the car. She saw the screen had been removed from the laundry room window, the laundry room door was open, her house was utterly ransacked, and her family's valuables were stuffed into three cheetah-print pillowcases that did not belong to the family.

Darrow's house was in a rural area with no other houses close by. Neither Bruno nor his companions had a social connection to Darrow's family or a legitimate reason to be on the property. When Darrow asked what they were doing at her house, Bruno mentioned they were looking for "Josh," but his response appeared to be pretextual.

Bruno showed no interest in getting directions to Josh's house from Darrow and drove right past Josh's house as the group left the area.

The evidence reasonably indicated that Bruno, Ambrosio, Trevino, and Lopez had arrived at Darrow's house together, in the red Acura; the three men went into the backyard area, taking three pillowcases with them; they identified the laundry room window as a way to access the house; at least one of the men removed the screen from the laundry room window, pushed open the window, and entered the house; once inside, one of the men opened the laundry room door, perhaps to let the others in and/or to facilitate a quick exit; Lopez stayed out front to serve as a lookout; the Acura's engine was left running to expedite a potential getaway; Lopez alerted the men to Darrow's arrival; the men immediately left the house and/or backyard, jettisoning the pillowcases that were loaded with items from the house; and the entire group abruptly drove off in the Acura. Bruno, Ambrosio, Trevino, and Lopez were still traveling together when Sergeant Zamudio stopped the red Acura on his way to Darrow's house in response to her 911 call.

In light of the applicable facts and the reasonable inferences arising from the facts, a rational finder of fact could conclude, beyond a reasonable doubt, that Bruno aided and abetted one or both of the other men in burglarizing Darrow's house. (See *In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094-1095 [evidence sufficient to prove defendant was aider and abettor where she was present at scene of robbery, ran from scene with other principals, and was still in company of robbery perpetrator shortly thereafter]; *People v. Wilson* (1928) 93 Cal.App. 632, 636 [unexplained presence at scene of crime implies complicity]; *People v. Jordan* (1962) 204 Cal.App.2d 782, 786 [“Burglary being one of those crimes which are usually committed in secret, the proof of the corpus delicti generally must rest on circumstantial evidence alone.”].)

Conspiracy conviction

Bruno next contends the evidence was insufficient to support his conviction for conspiracy to commit burglary, specifically with respect to the elements of an intent to

agree or conspire and an intent to commit the target offense that are required for the offense of conspiracy. We reject this contention too.

Here, the jury was instructed on conspiracy as follows:

“To prove that a defendant is guilty of this crime, the People must prove that:

“1. Steven Ambrosio and/or Anthony Bruno intended to agree and did agree with the other defendant or another person or persons to commit burglary;

“2. At the time of the agreement, the defendant and one or more of the other alleged members of the conspiracy intended that one or more of them would commit burglary;

“3. Steven Ambrosio and/or Anthony Bruno, or another person or persons, or all of them committed at least one of the following overt acts to accomplish burglary: drove to 35670 Road 603, Madera, California;⁴ exited their vehicle at said location; entered the residence located at 35670 Road 603, Madera, California; placed the victim’s property in bags; moved the bags containing the victim’s property to a location near the rear exit of the residence; and entered their vehicle and drove away from the residence;

“AND

“4. At least one of these overt acts was committed in California.”

The jury was further instructed that, “[t]he People must prove that the members of the alleged conspiracy had an agreement and intent to commit burglary. The People do not have to prove that any of the members of the alleged conspiracy actually met or came to a detailed or formal agreement to commit that crime.”

“Conspiracy is a specific intent crime, with the intent divided into two elements: “(a) the intent to agree or conspire, and (b) the intent to commit the offense which is the object of the conspiracy.” [Citation.] The intent to agree to commit a crime, which is the essential element of conspiracy, may be, and from the secrecy of the crime usually

⁴This is the address of Darrow’s house.

must be, established by circumstantial evidence. [Citation.] Thus, it is not necessary for the prosecution to prove the alleged conspirators made an express or formal agreement or that they ever met. [Citation.] It is necessary, however, for the prosecution to establish that the facts which are known prove beyond a reasonable doubt the existence of an agreement to commit the underlying crime.” (*People v. Austin* (1994) 23 Cal.App.4th 1596, 1606-1607, disapproved on another point in *People v. Palmer* (2001) 24 Cal.4th 856, 861.)

Thus, evidence is sufficient to prove criminal conspiracy “if it supports an inference that the parties positively or tacitly came to a mutual understanding to commit a crime. [Citation.] The existence of a conspiracy may be inferred from the conduct, relationship, interests, and activities of the alleged conspirators before and during the alleged conspiracy. [Citations.]’ [Citation.]” (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1135.) A conspiracy conviction can stand even if the defendant is acquitted of the substantive offense. (*People v. Peppers* (1983) 140 Cal.App.3d 677, 688.)

Our foregoing discussion regarding Bruno’s burglary conviction also demonstrates that the evidence was sufficient to prove Bruno conspired to commit burglary. The burglary reflected a degree of preplanning and coordination. Bruno’s intent to commit the burglary, and his agreement with the others to do so, can be inferred from the facts that he drove to the relatively remote location of Darrow’s house with his coconspirators, three of them went to the back of the house that was not visible from the street while one remained out front as a lookout, and all four coconspirators fled together once Darrow unexpectedly returned home in the middle of the afternoon. Other facts reflecting the existence of a conspiracy to commit burglary on the parts of Bruno and his companions were that the group brought pillowcases to haul any loot they acquired, they left their car running while they went onto the property, and Lopez did not answer when Darrow asked her if she needed help (but rather continued to text on her cell phone presumably to alert her companions of Darrow’s return). There was also ample evidence of overt acts

undertaken by the coconspirators, most obviously the commission of the burglary itself. In sum, sufficient evidence supported Bruno's conviction for conspiracy to commit burglary.⁵

DISPOSITION

The judgment is affirmed.

⁵In light of our conclusion that sufficient evidence supported Bruno's conviction for conspiracy to commit burglary, we need not address Bruno's final and largely incomprehensible contention "that there was insufficient evidence to convict him of conspiracy as an aider and abettor." (*People v. Kwok, supra*, 63 Cal.App.4th at p. 1245 [“Before a judgment of conviction can be set aside for insufficiency of the evidence to support the trier of fact's verdict, it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support it.”].)